

**SUMMARY OF UNCITRAL LEGISLATIVE GUIDE
ON SECURED TRANSACTIONS AND THE SUPPLEMENT
ON SECURITY RIGHTS IN INTELLECTUAL PROPERTY**

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Effectiveness of a security right against third parties.
Registration and the registry system. Priority of a security right
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Effectiveness of a security right against third parties

1. UNCITRAL'S Legislative Guide on Secured Transactions (the "*Guide*") separates the creation of the security right from the effectiveness of the security right against third parties., *i.e.*, a security right may be created and be effective between the parties even if it is not made effective against third parties. [Recommendation 29]
2. A security right that has not been made effective against third parties is effective between the grantor and the secured creditor. [Recommendation 30]
3. A security right is effective against third parties when it has been created and one of the steps for effectiveness against third parties has been taken [Recommendation 29]
4. Most security rights can be made effective against third parties by registration of a notice of the security right in a general security rights registry. The general security rights registry is discussed further below. [Recommendation 32]
5. There are additional methods of making a security right effective against third parties:
 - Possession by the secured creditor of tangible assets [Recommendation 37]
 - Registration in a specialized registry, if the specialized registry provides for registration with effective against third parties [Recommendation 38]
 - Control of a bank account [Recommendation 49]
 - Automatically for proceeds and attachments to encumbered assets [Recommendations 39, 40, and 41]
6. Generally, if an encumbered asset is transferred, the security right in the encumbered assets that is effective against third parties remains effective against third parties. The effect of a transfer of an encumbered asset is discussed further

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below. [Recommendation 31]

Registration and the registry system

7. The registry provides public information about the existence of a security right in encumbered assets and assists in establishing the priority of a security right. Priority is discussed further below. Another panel will discuss a project on registry systems in detail
8. A notice of the security right is registered in the registry, not the security agreement or similar document. The recording of the notice does not create a security right. [Recommendations 33 and 54(b)]
9. The registry should be [Recommendation 54]:
 - Electronic
 - Centralized
 - Indexed by the identifier for the grantor
 - Accessible by the public for a modest fee
 - Accessible electronically
5. The notice requires *only* the following information [Recommendation 57]:
 - An identifier for the grantor
 - A description of the encumbered assets covered by the notice
 - The duration of the registration
 - If a State so decides, the maximum amount of the secured obligation
6. The notice may be registered before or after the security right is created [Recommendation 67]
7. The notice may cover existing and future encumbered assets [Recommendation 68]
8. The notice may cover existing and future security agreements [Recommendation 68]

Priority of a security right

9. The *Guide* provides for the priority of a security right against the rights of

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competing claimants

10. “Competing claimants” include:

- Other secured creditors with a security right in the same encumbered asset
- A transferee of the encumbered asset, including buyers, lessees, and licensees
- Others with a right to the encumbered asset (such as a creditor holding a judicially-created lien)
- The insolvency representative

11. Some priority rules are based on the *nemo dat* principle and some are based on priority rules

12. As between two security rights made effective against third parties by registration of a notice, priority is based on the order of registration, even if registration took place before creation of the security right [Recommendation 76(a)]

13. As between two security rights each of which was made effective against third parties by a method other than the registration of a notice, priority is based on the order of effectiveness against third parties [Recommendation 76(b)]

14. As between two security rights one of which was made effective against third parties by registration of a notice and the other by another method, priority is based on the earlier of registration or when the security right was made effective against third parties (for the one that was not registered) [Recommendation 76(c)]

15. When a security right has been made effective against third parties by registration in a specialized registry, the security right has priority over a security right made effective against third parties by another method [Recommendation 77]

16. A security right generally continues in a security right upon its transfer (including a sale, lease, or license). [Recommendation 79]

17. A security right does *not* continue in an encumbered assets upon its transfer (including a sale, lease, or license) [Recommendations 80-81]:

- If the secured creditor authorizes the transfer free of the security right
- If the transfer takes place in the ordinary course of the transferor’s business and the transferee does not have knowledge that the transfer violates the rights of the secured creditor

This recommendation affects only the priority between the secured creditor and the

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transferee, it does not affect the relationship between the transferor and the transferee.

18. Generally a security right that is effective against third parties has priority over the rights of an unsecured creditor. If an unsecured creditor has obtained a right in the encumbered asset before by judicial process before the security right has been made effective against third parties, the unsecured creditor will have priority with respect to the encumbered asset. [Recommendation 84]
19. A competing claimant's knowledge of the existence of a security right does not affect the priority recommendations [Recommendation 93]
20. There are several asset-specific priority recommendations, for example:
 - A secured creditor that has possession of a negotiable instrument has priority over a secured creditor with a security right that was made effective against third parties only by registration [Recommendation 101]
 - A secured creditor that has control of a bank account has priority over a security right that was made effective against third parties only by registration [Recommendation 103]
21. Competing claimants may agree to adjust the priority of their rights. [Recommendation 94]